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10/600,700	06/23/2003	Yu-Chen Chuang	681939-52US	5739
72768 7590 03/04/2008 Akin Gump LLP - Silicon Valley 3000 El Camino Real Two Palo Alto Square, Suite 400 Palo Alto, CA 94306				
EXAMINER				
RAMPURIA, SATISH				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/600,700

Applicant(s)

CHUANG ET AL.

Examiner

SATISH S. RAMPURIA

Art Unit

2191

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

Response to Amendment

1. This action is in response to the RCE filed on 11/26/2007.
2. New claims added by the Applicants: 24-25
3. Claims 1-25 are pending.

Continued Examination Under 37 CFR 1.114

4. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/26/2007 has been entered.

Response to Arguments

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites that step (d) determining... said plurality of user terminals unselected in step (b). However, step (b) recites that *selecting* one of said plurality of user terminals, and step (d) is referring to plurality of user terminals *unselected*.

Further, step (d) recites determining from the list which of said plurality user terminals unselected in step (b). However, step (b) does not recite any list generated with unselected user terminals. Since step (c) recites that a list is requested from the system server for updated software versions, it not clear that the list is for updated software version or for the unselected user terminals as recited in step (d). For examination purposes Examiner has interpreted as a list is for updated software versions.

Claims 2-9 and 24 are directly or indirectly dependent on claim 1, therefore suffer the same deficiency as claim 1.

Clarification and/or correction are required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-5, 7-11, 13-17, 19, 21-24 are rejected under 35 U.S.C. 102(e) as being anticipated by US Publication No. 2004/0015953 to Vincent (hereinafter, Vincent).

Per claim 1:

Vincent discloses:

1. A method of software upgrade control for a system server and a sub-network including a plurality of user terminals, the method comprising the steps of:

(a) providing said system server with updated software versions (FIG. 6, elements 160-162, and 164 and paragraph [0055] "server computers 160, 162 and 164 are used to provide updated software components");

(b) selecting one of said plurality of user terminals (FIG. 6, element user computer 110);

(c) requesting from said system server a list of said updated software versions (paragraph [0061] "User computer... receives data file... opens the data file and accesses the required component list included... comparing the component information and the version information with information identifying the software components and versions thereof currently installed at user computer") that are absent in said selected one of said plurality of user terminals (paragraph [0014] "The

computer requests the software components not already installed on the computer from the identified network location or locations”);

(d) determining from the list which of said plurality of user terminals unselected (paragraph [0051] “The components that need to be updated may be located at one computer, typically a server, on the computer network, or they may be located at various and different computers (i.e., computers are not selected)” and paragraph [0063] “Once user computer 110 determines (i.e., from the component list) which software components and versions thereof are to be obtained”) in step (b) include any of said absent updated software versions (paragraph [0063] “Once user computer 110 determines which software components and versions thereof are to be obtained (i.e., absent updated software versions), the user computer performs acts to determine network locations from which it can download the required software components”);

(e) receiving from said unselected ones of said plurality of user terminals said absent updated software versions determined in step (d) to have been included in said unselected ones of said plurality of user terminals (paragraph [0064] “User computer 110 examines the update table received from software server 160 and... extracts the locations of the needed components, which include components D and E (i.e., the required components not yet installed at user computer 110) and component B (i.e., the component having a required version not yet installed at user computer 110)”);

(f) receiving from said server those of said absent updated software versions determined (paragraph [0064] "The user computer 110 then requests the required versions (i.e., absent) of software components B and E from software server 160 and the required version (i.e., absent) of software component D from the computer 164") in step (d) to have not been included in said unselected ones of said plurality of user terminals (paragraph [0051] "The components that need to be updated may be located at one computer, typically a server, on the computer network, or they may be located at various and different computers (i.e., computers are not selected)"); and

(g) upgrading said selected one of said user terminals with said received absent updated software versions (paragraph [0065] "The user computer 110 installs and configures the required software components when the required software components are received").

Per claim 2:

The rejection of claim 1 is incorporated and further, Vincent discloses:

2. The method of claim 1 further comprising the step of broadcasting an inquiry in said sub-network (paragraph [0063] "the network location of the update table may be found in other ways, such as through broadcasting or advertising across computer network (i.e., sub-network)") in determining whether said unselected user terminals include any of said absent updated software versions (paragraph [0063] "Once user computer 110

determines which software components and versions thereof are to be obtained").

Per claim 3:

The rejection of claim 1 is incorporated and further, Vincent discloses:

3. The method of claim 1 further comprising the step of registering at said system server after requesting from said system server a list of said updated software versions that are absent in said selected user terminal (paragraph [0064] "The user computer 110 then requests the required versions (i.e., absent) of software components B and E from software server 160 and the required version (i.e., absent) of software component D from the computer 164").

Although, Vincent discloses updating software on a user computer from network locations or network computers. Vincent is silent on registering updated software. However, the feature of registering the updated software deemed to be inherent to Vincent system. Since Vincent discloses downloading the requested software updates by the user computer from network locations (paragraph [0063]). Vincent's system would be inoperative if the system does not register the updated software.

Per claim 4:

The rejection of claim 1 is incorporated and further, Vincent discloses:

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4. The method of claim 1 further comprising the step of providing an agent in said selected user terminal in requesting said list of said absent updated software versions (paragraph [0014] "The computer requests the software components not already installed on the computer from the identified network location or locations") Note that an agent which requests the absent software is inherent to Vincent, since Vincent's system getting the component not installed on user computer form the network locations.

Per claim 5:

The rejection of claim 7 is incorporated and further, Vincent discloses:

5. The method of claim 1 further comprising the steps of: receiving an inquiry broadcast by said unselected user terminals (paragraph [0063] "the network location of the update table may be found in other ways, such as through broadcasting or advertising across computer network (Note that the inquiry is made to unselected terminal to determine the available components see paragraph [0051]"); and transmitting one of said updated software versions in response to said inquiry broadcast (paragraph [0064] "...components A, B, C and E are available from software server 160... component D is available from another computer associated with computer network 116, namely, computer 164. User computer 110 examines the update table received from software server 160 and extracts the locations of the needed components").

Per claim 7:

The rejection of claim 1 is incorporated and further, Vincent discloses:

7. The method of claim 1 further comprising the steps of: providing said selected user terminal with a first client-server structure (FIG. 6, element user computer 110) and a second client-server structure (FIG. 6, elements 160, 162, 164); and providing a client in said first client-server structure for requesting said list of said absent updated software versions (paragraph [0061] "User computer... receives data file... opens the data file and accesses the required component list included... comparing the component information and the version information with information identifying the software components and versions thereof currently installed at user computer").

Per claim 8:

The rejection of claim 7 is incorporated and further, Vincent discloses:

8. The method of claim 7 further comprising the steps of: providing said first client-server structure (FIG. 6, element user computer 110) with a first server for receiving an inquiry broadcast by said unselected user terminals (paragraph [0063] "the network location of the update table may be found in other ways, such as through broadcasting or advertising across computer network"); and providing said second client-server structure (FIG. 6, elements 160, 162, 164) with a second server for transmitting one of said updated software versions to one of said unselected user terminals in response to said

inquiry broadcast (paragraph [0064] "The user computer 110 then requests the required versions (i.e., absent) of software components B and E from software server 160 and the required version (i.e., absent) of software component D from the computer 164" i.e., the required versions are transmitted to user terminals).

Per claim 9:

The rejection of claim 7 is incorporated and further, Vincent discloses:

9. The method of claim 7 further comprising the steps of: providing said first client-server structure (FIG. 6, element user computer 110) with a first client for requesting one of said absent updated software versions from said unselected user terminals (paragraph [0063] "Once user computer 110 determines which software components and versions thereof are to be obtained (i.e., absent updated software versions)... download the required software components"); and providing said second client-server structure (FIG. 6, elements 160, 162, 164) with a second client for requesting one of said absent updated software versions from said system server (paragraph [0064] "The user computer 110 then requests the required versions (i.e., absent) of software components B and E from software server 160 and the required version (i.e., absent) of software component D from the computer 164").

Per claim 10:

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Vincent discloses:

10. A software upgrade control system comprising:

a system server (FIG. 6, element 160, 162, 164);

a plurality of updated software versions provided at said system server (FIG. 6, elements 160-162, and 164 and paragraph [0055] "server computers 160, 162 and 164 are used to provide updated software components");

a sub-network (FIG. 2) including a first user terminal (FIG. 2, element 110) and a second user terminal (FIG.2, element 114), each user terminal including a first client-server structure and a second client-server structure (FIG. 3, element 110a and 110b);

a client provided in said first client-server structure of said first user terminal for requesting from said system server a list of said updated software versions that are absent in said first user terminal (paragraph [0061] "User computer... receives data file... opens the data file and accesses the required component list included... comparing the component information and the version information with information identifying the software components and versions thereof currently installed at user computer") and also for broadcasting an inquiry to the second user terminal (paragraph [0063] "the network location of the update table may be found in other ways, such as through broadcasting or advertising across computer network") to determine whether the second user terminal has at least one of said updated software versions that are absent in said first user terminal (paragraph [0064] "The user computer 110 then requests the required versions

(i.e., absent) of software components B and E from software server 160 and the required version (i.e., absent) of software component D from the computer 164" i.e., the required versions are transmitted to user terminals);

a first server provided in said first client-server structure of said second user terminal for receiving the inquiry broadcast by the first user terminal (paragraph [0063] "Once user computer 110 determines which software components and versions thereof are to be obtained (i.e., absent updated software versions)... download the required software components");

a second server provided in said second client-server structure of said second user terminal for transmitting one of said updated software versions to said first user terminal in response to said inquiry broadcast (paragraph [0064] "The user computer 110 then requests the required versions (i.e., absent) of software components B and E from software server 160 and the required version (i.e., absent) of software component D from the computer 164" i.e., the required versions are transmitted to user terminals);

a first client provided in said second client-server structure of said first user terminal for receiving one of said absent updated software versions from said second user terminal (paragraph [0064] "The user computer 110 then requests the required versions (i.e., absent) of software components B and E from software server 160 and the required version (i.e., absent) of software component D from the computer 164"); and

a second client provided in said second client-server structure of said first user terminal for receiving one of said absent updated software versions from said system server (paragraph [0064] "The user computer 110 then requests the required versions (i.e., absent) of software components B and E from software server 160 and the required version (i.e., absent) of software component D from the computer 164").

Per claim 11:

11. The system of claim 10 further comprising an agent provided in said selected user terminal in requesting said list of said absent updated software versions. The limitations in the claims are similar to those in claim 4, and rejected under the same rational set forth in connection with the rejection of claim 4.

Per claim 13:

The rejection of claim 10 is incorporated and further, Vincent discloses:

13. The system of claim 10 wherein said system server supports a file transfer protocol (paragraph [0045] "a file from a File Transfer Protocol ("FTP") server, a shared file on another user's computer, a file from another process running on the same computer").

Per claim 14:

The rejection of claim 10 is incorporated and further, Vincent discloses:

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14. The system of claim 10 wherein said system server supports a file transfer assistant protocol (paragraph [0045] "a file from a File Transfer Protocol ("FTP") server, a shared file on another user's computer, a file from another process running on the same computer").

Per claim 15:

15. The system of claim 10 further comprising an agent in each of said user terminals for data communication between said first client-server structure and said second client-server structure. The limitations in the claims are similar to those in claim 4, and rejected under the same rationale set forth in connection with the rejection of claim 4.

Per claim 16:

The rejection of claim 10 is incorporated and further, Vincent discloses:

16. The system of claim 10 further comprising a local area network over which said system server communicates with each of said user terminals (paragraph [0040] "FIG. 1 include a local area network (LAN) 51 and a wide area network (WAN)").

Per claim 17:

Vincent discloses:

17. A software upgrade control system, comprising:

a system server that provides updated software versions (FIG. 6, element 160, 162, 164);

a plurality of user terminals grouped to form a sub-network (FIG. 2);

a first client-server structure formed in each of said user terminals to request from said system server a list of updated software versions that are absent (paragraph [0061]

"User computer... receives data file... opens the data file and accesses the required component list included... comparing the component information and the version information with information identifying the software components and versions thereof currently installed at user computer"), broadcast in said sub-network

an inquiry (paragraph [0063] "the network location of the update table may be found in other ways, such as through broadcasting or advertising across computer network") as to

whether any other user terminals have any updated software versions absent

therein , and receive an inquiry broadcast by said other user terminals (paragraph

[0061] "User computer... receives data file... opens the data file and accesses the required component list included... comparing the component information and the version information with information identifying the software components and versions thereof currently installed at user computer");

a second client-server structure formed in each of said user terminals to transmit one of said updated software versions to one of said other user terminals (paragraph [0064]

"The user computer 110 then requests the required versions (i.e., absent) of software

components B and E from software server 160 and the required version (i.e., absent) of software component D from the computer 164" i.e., the required versions are transmitted to user terminals), receive an absent updated software version from one of said other user terminals having said absent updated software version, and receive an absent updated software version from said system server if no other user terminals has said absent updated software version (paragraph [0063] "Once user computer 110 determines which software components and versions thereof are to be obtained (i.e., absent updated software versions)... download the required software components"); and

an agent formed in each of said user terminals for data communication between said first and second client-server structures (Vincent discloses updating software in networking environment, a communication agent must be present in Vincent system to perform the software update remotely. Therefore, a communication agent would be inherent to Vincent system).

Claims 19 and 21 are the system claim corresponding to system claims 13 and rejected under the same rational set forth in connection with the rejection of claims 13, above, as noted above.

Per claim 22:

The rejection of claim 17 is incorporated and further, Vincent discloses:

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a first storage for storing said updated software versions (FIG. 6, element 160, 162, 164).

Per claim 23:

The rejection of claim 22 is incorporated and further, Vincent discloses:

a second storage for storing said updated software versions that are unzipped (paragraph [0061] “comparing the component information and the version information with information identifying the software components and versions thereof currently installed at user computer”). Note that Vincent compares the installed versions with the updated version in order to upgrade the software. In order for to compare the installed software versions the upgrade version must be unzipped.

Per claim 24:

The rejection of claim 1 is incorporated and further, Vincent discloses:

24. (New) The method of claim 1, wherein said absent updated software versions determined in step(d) to have not been included in said unselected user terminals are received only after receiving from said unselected user terminals those of said absent updated software versions determined in step (d) to have been included in said unselected user terminals (paragraph [0051] “The components that need to be updated may be located at one computer, typically a server, on the computer network, or they may

be located at various and different computers (i.e., computers are not selected)").

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 25 rejected under 35 U.S.C. 103(a) as being unpatentable over Vincent in view of US Publication No. 2003/0074403 to Harrow et al. (hereinafter, Harrow).

Per claim 6:

The rejection of claim 1 is incorporated and further, Vincent does not explicitly disclose wherein said selected user terminal is upgraded within a predetermined time interval.

However, Harrow discloses in an analogous computer system wherein said selected user terminal is upgraded within a predetermined time interval (paragraph [0036] "The directory server 402 may also have an expiration timeout feature. That is, after say 10 minutes, the directory server 402 may direct a client to retrieve a copy of the file from the web server 422").

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the method of wherein said selected

user terminal is upgraded within a predetermined time interval as taught by Harrow into the method of updating software to user terminals as taught by Vincent. The modification would be obvious because of one of ordinary skill in the art would be motivated to selected user terminal is upgraded within a predetermined time interval to provide the current updates to client as suggested by Harrow (paragraph [0036]).

Per claim 25:

The rejection of claim 10 is incorporated and further, Vincent does not explicitly disclose, wherein said second user terminal transmits said updated software versions to said first user terminal using a P2P protocol.

However, Harrow discloses in an analogous computer system wherein said second user terminal transmits said updated software versions to said first user terminal using a P2P protocol (paragraph [0026] "The communication 314 between Client A 304-A and Client D 304-D is a peer-to-peer communication").

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the method of wherein said second user terminal transmits said updated software versions to said first user terminal using a P2P protocol as taught by Harrow into the method of updating software to user terminals as taught by Vincent. The modification would be obvious because of one of ordinary skill in the art would be motivated to use P2P protocol in upgrading software version of user terminal to provide a peer-to-peer software upgrading to lower the network traffic as suggested by Harrow (paragraph [0004]).

Claims 12, 18, 20 rejected under 35 U.S.C. 103(a) as being unpatentable over Vincent in view of US Patent No. 7,228,539 to Zhang et al. (hereinafter, Zhang).

Per claim 12:

The rejection of claim 10 is incorporated and further, Vincent does not explicitly disclose system server supports an intervention protocol.

However, Zhang discloses in a computer system server support an intervention protocol (col. 5, lines 1-3 "the conversion rules relate to differences in the format of the messages, or the inter-server communication protocol, provided for in each version of the software").

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the method of supporting an intervention protocol as taught by Zhang. The modification would be obvious because of one of ordinary skill in the art would be motivated to support an intervention protocol to provide to reduce the downtime during the update procedure as suggested by Zhang (col. 2, lines 28-37).

Claims 18 and 20 are the system claim corresponding to system claims 12 and rejected under the same rational set forth in connection with the rejection of claims 12, above, as noted above.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Satish S. Rampuria** whose telephone number is **(571) 272-3732**. The examiner can normally be reached on **8:30 am to 5:00 pm** Monday to Friday except every other Friday and Wednesday and federal holidays. Any inquiry of a general nature or relating to the status of this application should be directed to the **TC 2100 Group receptionist: 571-272-2100**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wei Y. Zhen** can be reached on **(571) 272-3708**. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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/Ted T. Vo/
Primary Examiner, Art Unit 2191